

MINUTES

MONTANA SENATE 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON LOCAL GOVERNMENT

Call to Order: By **CHAIRMAN DALE MAHLUM**, on March 8, 2001 at 3:00 P.M., in Room 335 Capitol.

ROLL CALL

Members Present:

Sen. Dale Mahlum, Chairman (R)
Sen. John C. Bohlinger, Vice Chairman (R)
Sen. Chris Christiaens (D)
Sen. Jim Elliott (D)
Sen. Bill Glaser (R)
Sen. Duane Grimes (R)
Sen. Don Hargrove (R)
Sen. Ken Miller (R)
Sen. Ken Toole (D)

Members Excused: Sen. John Cobb (R)
Sen. Emily Stonington (D)

Members Absent: None.

Staff Present: Leanne Kurtz, Legislative Branch
Mary Gay Wells, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 27, 3/5/2001
HB 30, 3/5/2001
HB 383, 3/5/2001
HB 469, 3/5/2001

Executive Action: HB 27 BC
HB 383 BC
HB 469 BCAA

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HEARING ON HB 27

Sponsor: REP. JOHN MUSGROVE, HD 91, HAVRE

Proponents: Doug Kaercher, Hill County Commissioner
Jim Smith, Lobbyist, Hill County Sheriff
Gordon Morris, Director, MT Assoc. of Counties
Charles Brooks, Lobbyist, Board of Commissioners,
Yellowstone County

Opponents: None

Opening Statement by Sponsor:

REP. JOHN MUSGROVE, HD 91, HAVRE. After being heard in the House Local Government Committee, HB 27 went to the House floor and was referred to House Judiciary for review. It was scrutinized by several lawyers and was returned with no changes. The bill was brought forward under resolutions from MT Assoc. of Counties (MACO) with the support of Hill county commissioners. Some people are concerned with the concept of curfew under any conditions. Bills have come forward to put children in uniforms, to give children breakfast and lunch, etc. Why shouldn't society have them home safe and in bed at a proper hour. When he was a boy, the whistle blew every night at 9:00 p.m. signaling young people and their parents that it was time for children to be home. Curfews do work. Some people are under the impression that a curfew for minors allows harsh government officials to abuse their power by oppressing youth. Usually, concerned parents want help in their parenting. They go to the appropriate officials and say, "We need a curfew to help in this area." That was exactly what happened to prompt this bill. A group of concerned citizens in Havre wanted to extend the Havre curfew out into the boundaries of the county. When they went to the county commissioners they found the county did not have the authority to do so. This bill asks for authority for the counties to impose a curfew if they so chose. Some counties will and some counties might not.

Proponents' Testimony:

Doug Kaercher, Hill County Commissioner. He urged support of the bill as an option tool for counties to help curb late night extracurricular activities especially in counties with enticing recreational areas outside incorporated city limits.

Jim Smith, Lobbyist, Hill County Sheriff. He had been asked to represent Hill County Sheriff, Tim Solomon. Sheriff Solomon had

sent a letter of recommendation and support **EXHIBIT(los53a01)**. He read portions of the letter to the committee.

Gordon Morris, Director, MT Assoc. of Counties. He asked for the committee's support.

Charles Brooks, Lobbyist, Board of Commissioners, Yellowstone Co. All three Yellowstone county commissioners are in support of HB 27. They urged the committee's support.

Opponents' Testimony: None

Questions from Committee Members and Responses:

SEN. JOHN BOHLINGER was not familiar with statute 45-2-104 as mentioned in the bill. He asked for an explanation of "absolute liability." **REP. MUSGROVE** replied that it means if a person is charged with a crime, they are probably guilty. If you go through a stop sign and are stopped by a policeman, you are guilty under that statute. That was one of the issues that was of concern on the floor of the House and sent to Judiciary to review. Absolute liability is a factor in most of the laws of this nature. When there are two penalties imposed or the possibility, \$75 or 10 hours of community service, the county attorney would have to prove the mental state if absolute liability were not imposed. For the county commissioners' ease and for this type of statute that is being asked for, absolute liability with the exceptions portion of the bill on line 18 "provide exceptions for approved activities" was necessary. These exceptions are very broad. There are several city ordinances that would be available as examples of those exceptions. People at the local level help put the code together for the exceptions that fit the needs of their community.

SEN. CHRIS CHRISTIAENS inquired about the language stating a curfew may be countywide or a portion of the county. Could the county commissioners say, "Anyone found north of the river in the wooded area, after 10:00 p.m., would be in violation of the county curfew that pertains to that specific area of the community." **Doug Kaercher** answered that Hill County has two areas of concern outside the city limits. One is south and is a 10,000 acre county park. The other is a recreational area, Fresno Reservoir. When the curfews come on in the city, the kids disperse to those recreational areas. Hill County has trouble also because of the highline towns along Highway 2. If the counties are allowed the authority, they would make their ordinance countywide.

SEN. CHRISTIAENS asked how the commissioners were going to educate the youth as to the areas that would have curfews if they did not make the curfew countywide. **Mr. Kaercher** answered that in their park, it is completely fenced in and could easily be posted. The same is true of the Fresno recreational area. He could not elaborate on other counties.

SEN. CHRISIAENS wanted to know what the final penalty would be for someone who violates a city curfew. Would it be the \$75 and/or 10 hours of community work. **Mr. Kaercher** felt that it was the same or similar to the cities since this bill was patterned after the curfew authority given to them.

CHAIRMAN DALE MAHLUM asked if the commissioners currently impose a curfew in their community. **Mr. Kaercher** replied that in the City of Havre, there is a curfew. The county commissioners are not allowed to do so at this time.

Closing by Sponsor:

REP. JOHN MUSGROVE closed.

HEARING ON HB 30

Sponsor: **REP. GARY MATTHEWS, HD 4, MILES CITY**

Proponents: None

Opponents: None

Opening Statement by Sponsor:

REP. GARY MATTHEWS, HD 4, MILES CITY. House Bill 30 comes at the request of the Law, Justice and Indian Affairs Interim Committee. In 1999, MT Supreme Court held that the plain meaning of section 52-5-109, MCA, limits counties to paying for the transportation of committed youth within the state. Therefore, this Section is amended to read "within the state." The House Local Government Committee did include the Riverside Correctional Facility. That facility is for female juveniles in Montana.

Questions from Committee Members and Responses:

SEN. CHRIS CHRISTIAENS asked **Dave Ohler, Chief Legal Counsel, Department of Corrections** the following question. What is the purpose of the bill. **Dave Ohler** gave some background to the bill. There was a case in Lincoln County and it concerned a

youth who was committed to the Dept. of Corrections, but the Youth Placement Committee determined the youth be placed in Texas. His Department's understanding of the statute at that time was the county had the responsibility of paying the cost of transporting the youth to Texas. The case went to the MT Supreme Court. They held that the counties were only responsible for paying the costs of transportation if the youth were placed in a youth correctional facility in the State of Montana. This bill came from the Interim Committee to make clear that counties are responsible only for paying the costs of transporting a youth to a youth correctional facility in the State of Montana. Conversely, the state would be responsible for the cost of transportation outside the state. It makes the language consistent with the court's ruling.

SEN. CHRISTIAENS commented that this bill would not preclude a judge from sending a youth to an out-of-state youth correctional facility and that the bill would only confirm that counties are responsible for transportation costs within the state.

SEN. CHRISTIAENS asked if the state commits to the Brown School in Deer Lodge and how that is handled by the state. **Mr. Ohler** informed him that Brown School is for sex offenders and he couldn't answer the question.

SEN. CHRISTIAENS stated that the committee may need to look at additional language to include any other in-state facility designated by the Dept. of Corrections. **Mr. Ohler** offered to speak to Matt Robertson, Legal Counsel, who deals with these issues.

SEN. JOHN BOHLINGER inquired where the Riverside Correctional Facility was located. **REP. MATTHEWS** replied that it was in Boulder and was for females.

Closing by Sponsor:

REP. MATTHEWS closed. He answered a previous question concerning the Brown School. On line 20 it reads, "or the place designated by the Department." Brown School could be included. There is another bill, HB 146, that has some amended language dealing with expenses. House Bill 146 deals with juvenile placement budget. If HB 30 passes, that language in HB 146 needs to be amended out. **Leanne Kurtz** has that amendment and will look at the two bills.

HEARING ON HB 383

Sponsor: **REP. CINDY YOUNKIN, HD 28, BOZEMAN**

Proponents: Robert Throssell, MT Assoc. of Clerk & Recorders

Opponents: None

Opening Statement by Sponsor:

REP. CINDY YOUNKIN, HD 28, BOZEMAN. There are two sections in the bill and this portion of the statute had not been updated since 1947. The Gallatin County Clerk and Recorder brought this issue to her attention. The problem language is on page 1, line 19. It reads, "the extent to which they purport to affect the property to which they relate." That means that someone could go to the clerk and recorder and request a title search and ask the clerk to tell them what the condition of that title is. To do that would put the clerk and recorder in the position of a title company. They would be telling that person what is the effect of all those documents. If the clerk and recorder tells them something that is not correct, that would place the county in a liable position. This is not part of their job. That is why there are title companies.

Section 2, page 2, line 4-6 would not be needed as it addresses the part in Section 1 if this bill passes.

Proponents' Testimony:

Robert Throssell, MT Assoc. of Clerk & Recorders. There is provision in the law that clerk and recorders can research a title and can tell people what the documents are. This bill eliminates the requirement for them to give judgment on how liens, easements, etc. affect the title. Smaller counties do this, as a service, and tell people what documents are on record. They don't want the responsibility of telling people what effects are possible on a title. This is a discretionary duty. If they are too busy at a particular time they could direct a person to a title company.

Opponents' Testimony: None

Questions from Committee Members and Responses:

SEN. DON HARGROVE asked how the fees are set for certain services. **Robert Throssell** informed the committee those are set forth in 74-26-31. It shows 50 cents per year. If a person wants a copy of any document, the charge is 50 cents for the first page and 25 cents for each subsequent page.

SEN. HARGROVE inquired how often clerk and recorders are asked to perform this duty. **Mr. Throssell** replied enough so to prompt

this bill to come forward. He also added that this service is not advertised.

SEN. CHRISTIAENS questioned why people do their own title searches when it is necessary to get title insurance and title companies do that research. **Mr. Throssell** believed that most transactions involving the purchasing and selling of property have title companies doing this work. The county clerk and recorder records are public records and anyone can go in and look for themselves.

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CHAIRMAN MAHLUM proposed that if he were to go to his county seat in Virginia City and request a search on a certain piece of land, would it be possible for him to ask one of the clerks to do that research. This would not be for buying or selling, but as a history buff. **Mr. Throssell** offered that if a person got there at the right time of day and things were slow, that clerk and recorder would be more than happy to help out and show them how to do some research on their own. If they were quite busy, they might not be able to help out at that precise time.

Closing by Sponsor:

REP. YOUNKIN closed. This bill takes clerks and recorders off the hook from having to give legal opinions about what the document means and what effects it might have on the title.

HEARING ON HB 469

Sponsor: REP. DIANE RICE, HD 33, HARRISON

Proponents: John Semple, MT Fire Alliance
Gordon Morris, Director, MT Assoc. of Counties

Opponents: None

Opening Statement by Sponsor:

REP. DIANE RICE, HD 33, HARRISON. This bill would allow fire districts the right to purchase and own land. Somehow, in the code, this was overlooked. This bill was brought forward by the Madison County Commissioners. Ennis is in the process of building a new fire station and realized this omission.

Proponents' Testimony:

John Semple, MT Fire Alliance. His group stands in strong support of the bill.

Gordon Morris, Director, MACO. MACO supports the bill.

Opponents' Testimony: None

Questions from Committee Members and Responses:

SEN. KEN MILLER asked how many rural fire districts are breaking the law right now. **REP. RICE** thought there were quite a few.

Closing by Sponsor:

REP. RICE closed. She had not included an effective date for the bill but an amendment had been prepared and was ready for executive action.

EXECUTIVE ACTION ON HB 469

Motion/Vote: **SEN. HARGROVE** moved that **HB 469 BE AMENDED EXHIBIT(los53a02)**. Motion carried 6-0.

Motion/Vote: **SEN. HARGROVE** moved that **HB 469 BE CONCURRED IN AS AMENDED**. Motion carried 6-0. **SEN. HARGROVE** will carry the bill.

(Senators Cobb, Elliott, Glaser, Stonington and Toole were out of the room)

EXECUTIVE ACTION ON HB 383

Motion/Vote: **SEN. CHRISTIAENS** moved that **HB 383 BE CONCURRED IN**. Motion carried 6-0. **SEN. BOHLINGER** will carry the bill.

(Senators Cobb, Elliott, Glaser, Stonington and Toole were out of the room)

EXECUTIVE ACTION ON HB 27

Motion: SEN. CHRISTIAENS moved that HB 27 BE CONCURRED IN.

Discussion:

SEN. DUANE GRIMES commented about the absolute liability issue. He had not used this term before and did not know it was in statute. After discussion with SENATOR LORENTS GROSFIELD and Greg Petesch, he might like to re-refer this bill to Judiciary if for no other reason than to highlight the "absolute liability" issue in order to impart this knowledge to the judiciary committee members.

SEN. HARGROVE asked what absolute liability means.

SEN. GRIMES said that means the county attorneys do not have to prove knowingly or negligently. If young people are out after curfew, whether they are knowledgeable of the law or not, they are guilty. If the fine is less than \$500 and a misdemeanor, this would apply. He didn't know that before and was startled to find that he didn't know this language.

Leanne Kurtz informed the committee that statute 45-2-104 states that basically, except for deliberate homicide or an offense that involves absolute liability, a mental state has to be proven. In the House, the discussion was that county attorneys might not be interested in pursuing this if they had to prove the mental state of a person if they were knowingly or negligently violating a curfew.

SEN. BOHLINGER felt the bill and its stated penalties were good and not as onerous as the fines for a misdemeanor. Young people would be guilty just by being there after curfew and the police could round them up.

SEN. CHRISTIAENS explained the reason he asked about the north side of Havre is because he knew about the area from his own youth. He felt the bill makes sense.

Vote: Motion carried 6-1 with Toole voting no.

(Senators Cobb, Elliott, Glaser and Stonington were out of the room)

ADJOURNMENT

Adjournment: 4:00 P.M.

SEN. DALE MAHLUM, Chairman

MARY GAY WELLS, Secretary

DM/MW

EXHIBIT (los53aad)